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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Federal-State Joint Board on)
Universal Service)
Use of Auctions to Determine High-Cost)
Universal Service Support)

WC Docket No. 05-337

**COMMENTS OF THE
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.**

October 10, 2006

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Summary

The Federal-State Joint Board on Universal Service has asked interested parties to comment on the use of “reverse auctions” to determine high-cost universal service support.

The Commission and the Joint Board have asked for comment on competitive bidding mechanisms several times over the past ten years. Comments submitted in each of these proceedings consistently express concern that awarding high cost support to eligible telecommunications carriers (ETCs) on the basis of competitive bids could substantially undermine universal service in rural and high cost areas, in contravention of the 1996 Act. The record in prior proceedings also suggests such proposals would be administratively unworkable.

The Joint Board’s *Public Notice* includes an illustrative proposal for a reverse auction mechanism that appears intended to address some of the issues raised in prior proceedings. But many core policy and practical problems remain. Of particular concern to NECA are the effects a reverse auction mechanism would have on existing rate-of-return regulatory structures. If universal service support amounts are fixed pursuant to competitive bids, incumbent local exchange carriers (ILECs) will have no practical alternative to make up shortfalls in revenue requirements that would almost inevitably occur. The same problem would arise even if ILECs are permitted to elect to win the initial ten-year wireline bid, as proposed under the plan’s “ILEC Phase-in” provision. In that case, high cost payments would be frozen at base-year levels, with an adjustment only for inflation during the initial term.

Since no practical mechanism exists for rate of return carriers operating under a fixed-payment plan to recover shortfalls in revenue requirements, reverse auctions would effectively end rate of return regulation for rural ILECs – a result not contemplated by the Joint Board’s proposal.

It is imperative the Joint Board consider carefully the effects a reverse auction proposal would have on existing rate of return regulatory structures before recommending such a plan to the Commission.

NECA recognizes the need to address concerns about growth in the high cost fund. But many commenters have previously pointed out nearly all real growth in the fund is associated with payments to competitive ETCs, with payments in some high cost areas going to as many as nine different carriers. If the Joint Board wishes to consider experimenting with reverse auctions to resolve these problems, it should therefore consider applying such mechanisms only to competitive ETCs and leave existing mechanisms in place for rate of return ILECs. So long as these carriers remain regulated as incumbent carriers of last resort, cost recovery mechanisms that fully recognize the actual embedded costs of providing universal service in high cost areas remain necessary.

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I. INTRODUCTION

By *Public Notice* dated August 11, 2006, the Federal-State Joint Board on Universal Service (Joint Board) has asked interested parties to comment on the use of “reverse auctions” to determine high cost universal service fund (USF) support for eligible telecommunications carriers (ETCs).¹

In these Comments, the National Exchange Carrier Association, Inc. (NECA) respectfully suggests the Joint Board refrain from recommending reverse auctions as a means for determining high cost universal service support for rural rate-of-return (ROR) incumbent local exchange carriers (ILECs). Comments submitted in prior proceedings have raised significant questions as to whether the use of competitive bidding to determine high cost support amounts for rural ILECs would be

¹ Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support, WC Docket No. 05-337, CC Docket No. 96-45, *Public Notice*, 71 Fed. Reg. 50420 (2006) (*Public Notice*).

compatible with the universal service provisions of the Communications Act. The record also suggests such mechanisms would be administratively unworkable, and would have the unfortunate effect of reducing incentives to invest in new technology in rural areas.

While the illustrative proposal set forth in the Joint Board's *Public Notice* contains several features apparently intended to address previously-identified concerns, fundamental legal and policy issues remain. NECA is particularly concerned that limiting high cost universal service support for individual rural ILECs to fixed amounts (regardless of whether those amounts are determined by competitive bidding or by a fixed base year payment adjusted for inflation) would undermine if not destroy existing ROR cost recovery mechanisms – a consequence apparently not contemplated by the *Public Notice*. ROR-based tariff and universal service cost recovery methods continue to be necessary, to assure support to ROR ILECs remains “specific, sufficient and predictable” as required under section 254 of the Act. These methods should be maintained for ROR ILECs so long as they are regulated as incumbent carriers of last resort.

II. BACKGROUND

The Joint Board and the Commission have on several previous occasions invited comment on the use of competitive bidding mechanisms to determine high cost universal service support. In July 1995, for example, the Commission issued a *Notice of Inquiry* in Docket 80-286 seeking comment on the potential use of competitive bids to determine the distribution of high-cost assistance.² Less than a year later, in its March 1996 *Notice of Proposed Rulemaking* in CC Docket No. 96-45, the Commission asked whether the use of competitive bidding would be consistent with the universal service provisions of the 1996 Act, including section 214(e).³ The Commission's Common Carrier

² Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, *Notice of Proposed Rulemaking and Notice of Inquiry*, 10 FCC Rcd 12309 (1995) at ¶ 84.

³ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Notice of Proposed Rulemaking and Order*

Bureau then sought additional comment in July 1996 on the use of competitive bids.⁴ While the Joint Board eventually declined to recommend the adoption of any specific competitive bidding plan to the Commission,⁵ the Commission stated that it would “continue to explore the use of competitive bidding as a mechanism to provide universal service.”⁶

In a September 1999 *Further Notice* in Docket 96-45,⁷ the Commission tentatively concluded it should adopt a competitive bidding mechanism to identify the carrier or carriers best able to provide supported services in unserved tribal lands, and to set the level of support provided for serving such areas.⁸ The Commission also sought and obtained further comment on previously-submitted competitive bid proposals.⁹ No further action was taken with respect to either plan. The Commission did, however, request that the Joint Board review certain rules relating to support for Competitive ETCs (CETCs) and secondary lines.¹⁰ In seeking comment on these issues, the Joint Board again requested interested parties to discuss whether auctions might be utilized to determine USF support in areas served by more than one ETC.¹¹ No specific recommendations were made to the Commission as a result of this process, however.

Establishing Joint Board, 11 FCC Rcd 18092 (1996) at ¶ 35.

⁴ See Common Carrier Bureau Seeks Further Comment on Specific Questions in Universal Service Notice of Proposed Rulemaking, CC Docket No. 96-45, *Public Notice*, 11 FCC Rcd 7750 (1996). In addition, Commission staff conducted *ex parte* meetings related to competitive bidding, including a March 19, 1997 forum on universal service auctions.

⁵ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87 (1997).

⁶ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 (1997) at ¶ 26.

⁷ See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, *Further Notice of Proposed Rulemaking*, 14 FCC Rcd 21177 (1999). (*Further Notice*).

⁸ *Id.* at ¶ 102.

⁹ *Id.* at ¶ 103.

¹⁰ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order*, 17 FCC Rcd 22642 (2002) (*Referral Order*).

¹¹ Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to

The Joint Board has now issued the instant *Public Notice* again seeking comment on the merits of using reverse auctions to determine high cost universal service support to ETCs. Issues to be addressed include the overall appropriateness of auctions as a means for determining universal service support, potential conflicts with the universal service provisions of the 1996 Act, the impact such auctions would have on jurisdictional responsibilities between state and federal regulators, methods for designing and structuring such auctions, quality of service and enforcement concerns, administrative issues, and the treatment of ILECs under an auction methodology.

Attached to the *Public Notice* is a specific auction proposal intended for discussion purposes. The proposal, not necessarily endorsed by the Joint Board, would limit the number of supported networks to two in each area, requiring each to provide voice service, with one also required to provide broadband while the other is required to provide wireless mobility service.¹² Under the illustrative proposal, each selected provider would be required to serve 90% or more of households in a supported area for the duration of a ten-year contract, which would be awarded to the most cost-effective proposals based on a number of criteria including but not limited to price.¹³

The plan contemplates a phase-in process for ILECs, who could theoretically elect to be treated as the winning broadband network bidder in their current service areas for the first ten-year term, if they agree to meet all ETC requirements and accept support at levels equal to that received for the most recent full year, plus an allowance for inflation.¹⁴ State commissions would recommend the choice of the winning and runner-up bidders to the Commission, and upon approval

High-Cost Universal Service Support and the ETC Designation Process, CC Docket No. 96-45, *Public Notice*, 18 FCC Rcd 1941 (2003) at ¶ 20.

¹² *Public Notice* at 8.

¹³ *Id.*

¹⁴ *Id.* at 9.

by the Commission, be responsible for negotiating and administering contracts, which would also be subject to Commission approval.¹⁵

III. DISCUSSION

The subject of using competitive bidding to determine high cost support amounts has been examined on no less than five occasions over the past ten years by the Commission and the Joint Board. In response to each proposal or inquiry, commenters have expressed overwhelming opposition to the use of competitive bidding, primarily out of concerns such mechanisms could substantially damage or even eliminate universal service in rural and high cost areas.¹⁶ Commenters have suggested, for example, that competitive bidding approaches would cause unscrupulous bidders to engage in a “race for the bottom,” as they seek to capture funding dollars without regard to maintaining or improving service quality.¹⁷ Commenters also have argued that awarding support based on competitive bids would not meet the Act’s requirement for specific, sufficient and predictable support, and that such a mechanism may impinge on state regulatory oversight of the ETC designation process and interfere with states’ responsibility for monitoring service quality issues.¹⁸

The driving force behind the Joint Board’s repeated reviews of competitive bidding concepts appears to be the concern that, absent some type of reform, the high cost fund will grow out of

¹⁵ *Id.*

¹⁶ *E.g.*, Montana Universal Service Task Force Comments at 34, CC Docket No. 96-45 (May 5, 2003); OPASTCO Comments at 28, CC Docket No. 96-45 (May 5, 2003); Sprint Comments at 11, CC Docket No. 96-45 (May 5, 2003); Texas Statewide Telephone Cooperative at 10, CC Docket No. 96-45 (May 5, 2003); GVNW Comments at 10, CC Docket No. 96-45 (May 5, 2003); Alaska Telephone Association Comments at 18, CC Docket No. 96-45 (May 5, 2003); Fred Williamson & Associates at 27, CC Docket No. 96-45 (May 5, 2003); Montana Telecommunications Association Comments at 7, CC Docket No. 96-45 (May 5, 2003); Rural Independent Competitive Alliance Comments at 23, CC Docket No. 96-45 (May 5, 2003); NTCA Reply Comments at 21, CC Docket No. 96-45 (June 3, 2003); OPASTCO reply Comments at 18, CC Docket No. 96-45 (June 3, 2003); NASUCA Reply Comments at 35, CC Docket No. 96-45 (June 3, 2003).

¹⁷ *E.g.*, Alaska Telephone Association Comments at 18, CC Docket No. 96-45 (May 5, 2003).

¹⁸ *E.g.*, NTCA Initial Comments at 17, CC Docket No. 96-45 (May 5, 2003).

control. Prior comments in these proceedings have shown, however, that high cost payments to rural ILECs (who receive support on the basis of their embedded costs) have remained stable for some time, and that nearly all real growth in the fund is caused by payments to competitive ETCs.¹⁹ Competitive bidding mechanisms also appear intended to address situations where multiple ETCs have been designated to serve in the same rural areas. As several commenters have previously pointed out, using universal service support to subsidize entry by multiple competitors in areas that may not be capable of supporting even one carrier absent high cost support does not appear consistent with the goals of section 254 of the Act.²⁰

But even assuming that basing support on competitive bidding mechanisms would solve these problems, serious questions have been raised as to whether it would be in the public interest to auction high-cost support for critical rural telecommunications infrastructures to the lowest bidder, or whether universal service support based on fixed bid amounts would severely limit carrier incentives to invest in network upgrades and new technologies.²¹ Commenters have also raised concerns that contracts might be awarded in some cases to competitive entrants who later decide that it is unprofitable to continue providing service at bid prices and therefore opt to abandon rural markets. Since the existing ILEC would likely have withdrawn service from the area by that time (or perhaps have gone out of business entirely), service to high cost areas might never be restored.²²

¹⁹ E.g., NECA Comments at 6, CC Docket No. 96-45 (Sept. 30, 2005); NECA Reply Comments at 4, CC Docket No. 96-45 (Dec. 14, 2004); NTCA Initial Comments at 13, CC Docket No. 96-45 (Aug. 6, 2004). These comments have also explained that much of the perceived growth in high cost funding to ILECs has resulted from regulatory actions that have shifted revenue requirements from access charges to universal service programs. See also GAO Report "Factors That May Increase Spending From the Universal Service Fund" at 11 (June 20, 2006).

²⁰ A recent *ex parte* filing by CenturyTel aptly illustrates this problem by referencing rural areas where as many as nine competitive carriers have been designated as ETCs, and where the number of claimed supported lines actually exceeds the number of customers in a service territory. Letter from Karen Brinkman, Counsel to CenturyTel, to Marlene H. Dortch, FCC, CC Docket Nos. 96-45, 01-92 (Sept. 13, 2006) (*CenturyTel ex parte*).

²¹ E.g., NTCA Initial Comments at 17, CC Docket No. 96-45 (May 5, 2003); OPASTCO Comments at 28, CC Docket No. 96-45 (May 5, 2003).

²² Commenters have also raised administrative and practical objections to competitive bidding proposals, wondering, for

The illustrative reverse auction proposal attached to the Public Notice has a number of features that appear intended to address some of these concerns. For example, as noted above, the plan would explicitly reserve support to one voice and broadband Internet access provider and one voice and wireless mobility provider. This provision appears to recognize the complementary nature of wireline and wireless services in today's telecommunications marketplace. Limiting support to only two providers per service area also would address existing situations where multiple ETCs have been designated to serve areas where it is questionable whether any more than one ETC is sustainable.²³

Awarding universal service contracts on a ten-year basis recognizes to some extent the long-term nature of telecommunications plant investment and the need for predictability in universal service support amounts. It may be argued, however, that imposition of an artificial ten-year universal service contract with support amounts fixed for a full ten-year term will distort carrier investment cycles, and therefore delay service improvements in rural areas unnecessarily. In the latter years of a contract, a carrier might be reluctant to invest in new technology until the next bidding round is decided. In circumstances where technological and marketplace considerations might otherwise warrant more frequent upgrades, such delays could harm universal service.

The plan envisions a cooperative relationship between state and federal regulators, with states taking responsibility for recommending to the Commission the choice of winning and runner-up bidders, and for negotiating and administering contracts (subject to Commission approval and subsequent review). This element appears to reflect the important role that state regulators play

example, how such auctions would be conducted and whether it would be possible to enforce service quality requirements, especially if larger, well-financed regional carriers submit unrealistically low bids solely to gain support dollars from rural areas without having an adequate commitment to local service quality. *E.g.* Fred Williamson and Associates at 28, CC Docket No. 96-45 (May 5, 2003).

²³ *CenturyTel ex parte.*

with respect to monitoring local service quality, and may help resolve formidable problems associated with administering thousands of local universal service contracts at the federal level. Yet, the multiple approvals and overlapping regulatory structures contemplated by the plan may create even more complex legal interactions between state and federal regulators and generate more jurisdictional disputes and conflicts of law than they are intended to resolve.

Even if legal conflicts and jurisdictional disputes could be avoided, regulators at both federal and state levels would likely be faced with significant administrative burdens in any event. For example, it can be expected that regulatory requirements imposed on carriers will change substantially over time, as new technologies make their way to market and new legal requirements are imposed on carriers. Over the past ten years, for example, Congress, the Commission and state regulators have imposed many new requirements on carriers²⁴ that could not necessarily have been foreseen if competitive bidding had been introduced in 1995. Regulatory change can certainly be expected to continue at an even more rapid pace, as technology and the telecommunications marketplace continue to evolve. "Universal service contracts" intended to specify terms and conditions of service over any ten-year period will thus become outdated regularly, causing carriers either to request renegotiation of those contracts or seek hardship waivers. Compared to current regulatory methods, it will be far more difficult for the Commission or state regulators to implement new regulatory requirements under a contract-based universal service system. These additional constraints should be considered carefully before adopting any type of competitive bidding mechanism.

The concept of allowing a ten-year phase-in period for ILECs (*i.e.*, by creating an option for ILECs to elect to "win" the first competitive bid cycle) appears to recognize the special role that

²⁴ *E.g.*, Local Number Portability, Thousands-Block Number Pooling, CALEA, E911, CPNI, hearing-aid compatibility requirements, to name but a few.

ILECs play in providing service in rural areas. The plan's suggestion that universal service support for ILECs be fixed (either at bids levels or at inflation-adjusted base year levels) is fundamentally inconsistent with existing ROR cost recovery mechanisms.

Current high cost support mechanisms for rural ILECs are carefully designed to work in tandem with end user rates and "carriers' carrier" access charges to permit carriers to recover the actual costs of providing service plus a reasonable return on investment. Interstate Common Line Support (ICLS), for example, is determined by calculating interstate common line revenue requirements for rural carriers and subtracting amounts recovered through common line rate elements (primarily, capped interstate subscriber line charges (SLCs)).²⁵ Local Switching Support (LSS) amounts are determined by applying a weighting factor to certain embedded switching costs, as specified in the Commission's Part 54 universal service rules, with tariffed local switching access charges calculated to recover residual revenue requirements.²⁶ High cost loop (HCL) amounts for rural ROR ILECs are determined based on actual investment and operating costs, using unseparated embedded costs associated with certain categories of loop plant, with a set percentage of such costs assigned to the interstate jurisdiction pursuant to section 36.631 of the Commission's rules for recovery via the high cost fund.

For each of these existing mechanisms, support amounts are based on actual embedded costs, with portions specifically designated for recovery via support funds or through end user and access rates. The principal of using embedded costs in this manner to determine universal service support has long been recognized by the Commission as an important way to accommodate the special characteristics of rural ROR carriers. Concerns about adverse effects on rural consumers led the

²⁵ 47 C.F.R. § 54.901.

²⁶ 47 C.F.R. § 36.125.

Commission to refrain from mandating price cap regulation for rural carriers in 1993.²⁷ More recently, the Commission reviewed findings of the Rural Task Force (RTF) regarding challenges faced by rural carriers in serving sparsely populated, isolated areas and confirmed again that existing embedded cost mechanisms should be left in place for rural carriers.²⁸ According to the RTF, as well as many other data sources,²⁹ areas served by ROR ILECs typically have few, if any, high volume subscribers, but do face high installation and maintenance costs, and high transportation costs for personnel, equipment, and supplies. They also face the need to devote more resources on a proportional basis to protect network reliability than do non-rural carriers.³⁰ These factors, in the Commission's view, clearly required continuation of a modified embedded cost mechanism for rural carriers.³¹ Continued reliance on embedded cost mechanisms also ensures that support provided to rural carriers is "specific, predictable, and sufficient" and provides important certainty to rural carriers as they consider investments in updated technology for their areas.³²

²⁷ Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, CC Docket No. 92-135, *Report and Order*, 8 FCC Rcd 4545 (1993) at ¶ 9.

²⁸ Federal-State Joint Board on Universal Service, Multi Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, 96-45, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No 00-256*, 16 FCC Rcd 11244 (2001) (*RTF Order*). See also Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00 256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd 19613 (2001) (*MAG Order*).

²⁹ E.g., *Trends 2006, Making Progress with Broadband*, NECA (2006) at 7-8; *Broadband Deployment Is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, Congressional Accounting Office (May 2006); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 16 FCC Rcd 6153, 6175 (2001).

³⁰ *RTF Order* at ¶ 16.

³¹ *Id.* at ¶ 25.

³² *RTF Order* at ¶¶ 16-17; *MAG Order* at ¶ 28.

Basing high cost universal service support on fixed amounts would fundamentally change and perhaps irrevocably destroy existing ROR cost recovery mechanisms. This would occur because current federal and state regulatory structures do not provide practical alternatives (and in some cases, no alternatives) for carriers to make up shortfalls in revenue requirements that would almost certainly occur if universal service amounts are fixed over ten-year periods. For example, shortfalls in ICLS amounts cannot be addressed by recipient ROR ILECs because their existing SLC rates are at capped levels, and no other interstate rate element is available to recover interstate-allocated common line revenue requirements. Other methods for offsetting shortfalls would likely be inconsistent with long-standing public policy decisions.³³ Even if the suggested phase-in approach described in the Joint Board's *Public Notice* is adopted, the effect on rate of return cost recovery mechanisms would be the same because the phase-in proposal would "fix" universal service support at base year levels (adjusted only for inflation).³⁴

These potential adverse effects on existing ROR cost recovery mechanisms do not appear to have been contemplated by the *Public Notice*. Therefore, at a minimum, the Joint Board would need to consider these potential impacts carefully before recommending application of any reverse auction method to ROR ILECs.³⁵ Given the extensive prior record demonstrating the importance of

³³ For example, the Joint Board and the Commission could theoretically address HCL shortfalls by changing the Part 36 expense adjustment algorithm to transfer HCL shortfalls back to the state jurisdiction. This would create upward pressure on intrastate rates, which the high cost loop program was specifically designed to offset. Significantly increasing SLCs or local rates for rural subscribers would, of course, be inconsistent with the statutory mandate for reasonably comparable rates between urban and rural areas. Higher state access charges would also likely result in increased arbitrage opportunity and phantom traffic and would undermine ongoing efforts to reform intercarrier compensation mechanisms.

³⁴ The Commission has previously determined that it would not be in the public interest to freeze universal support to ILECs as a result of competitive entry. See *RTF Order* at ¶¶ 123-130.

³⁵ It is settled law under the Administrative Procedures Act that an agency must consider all important aspects of a problem or issue placed before it or its decision must be reversed. *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43-44 (1983); *Office of Communications of United Church of Christ v. FCC*, 707 F. 2d 1413 (D.C. Cir. 1983); *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) ("*California II*"). The Commission would be bound by this rule in considering the Joint Board's recommended decision.

embedded cost recovery mechanisms to universal service, it appears a clear and convincing explanation would be needed to show how facts or circumstances in rural areas have changed to warrant abandonment of these mechanisms.³⁶

It is not clear, however, that such a showing can be made. The concerns that have consistently led the Commission to find that embedded cost-based recovery mechanisms are necessary to assure universal service in rural ILEC areas remain unchanged. NECA studies show that rural serving territories remain sparsely populated, and on average have higher percentages of residential vs. business customers, lower per-capita income levels, far lower household density levels, generally older subscribers, and fewer multi-line businesses.³⁷ These challenges continue to make it uniquely difficult for ROR ILECs to provide service in rural serving areas. Abandonment of actual cost-based universal service and tariff cost recovery mechanisms at this stage may well make it impossible for these carriers to continue investing in the new technologies and facilities necessary for extending broadband services to rural areas.

For these reasons NECA respectfully suggests the Joint Board refrain from recommending the use of reverse auctions to determine high cost support amounts for rural ILECs. Maintaining existing embedded cost-based high cost programs for these carriers is entirely consistent with the Act's requirement that such support be "specific, sufficient and predictable." Keeping existing embedded cost mechanisms in place for ILECs alone also recognizes the special status and obligations the Act imposes on these carriers, as well as their responsibilities to serve as "carriers of last resort" within their service territories.

³⁶ Similarly, an agency cannot simply change positions on an issue, but must provide a reasoned explanation for such a reversal, which often includes an explanation of the change in circumstances that motivated the agency to alter the course of its regulation. See, e.g., *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) ("*California I*") *California II* 4 F.3d 1505.

³⁷ *The Packet Train Needs to Stop at Every Door* at ¶¶ 22-25, NECA (2006).

This approach would permit the Joint Board to consider and perhaps experiment with competitive bidding approaches for competitive ETCs. Applying reverse auction methods to CETCs, while leaving existing cost-based mechanisms in place for ROR ILECs, could substantially address concerns about growth in the fund and help avoid continued uneconomic provision of support to multiple carriers in sparsely-populated rural areas, without any adverse effects on the provision of universal service by ROR ILECs, who continue to serve such areas as carriers of last resort.

This is not to suggest that existing cost recovery mechanisms must be maintained indefinitely for ROR ILECs or any particular carrier or group of carriers. For example, Congress recognized when it passed the 1996 Act that local exchange carriers currently defined as “incumbents” may well be displaced in the marketplace by other carriers, who may then become subject to the same cost recovery rules (as well as accompanying interconnection and carrier of last resort obligations) differentially imposed on ILECs.³⁸ It may also be the case that changes in technology and competitive circumstances will eventually lead the Commission to forbear from regulating any carrier in a given market area differently from other carriers.³⁹ For so long as ROR ILECs remain regulated as incumbent carriers as well as carriers of last resort, however, cost recovery mechanisms

³⁸ See 47 U.S.C. § 252(h); See also *Petition of Mid Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana*, WC 02-78, *Notice of Proposed Rulemaking*, 19 FCC Rcd 23070 (2004).

³⁹ The Commission’s 2005 *Wireline Broadband Order* and other recent forbearance orders applicable to broadband services represent significant steps in this direction. See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*; 1998 Biennial Regulatory Review – *Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises*; *Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242, *Consumer Protection in the Broadband Era*, WC Docket No. 05-271, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Order*). See also, News Release, Verizon Telephone Companies’ Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services is Granted by Operation of Law, WC Docket No. 04-440 (March 20, 2006).

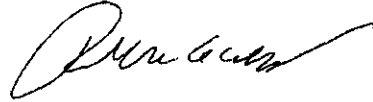
that fully recognize the actual embedded costs of providing universal service in rural areas remain necessary and should continue.

IV. CONCLUSION

For all the above reasons, NECA respectfully suggests the Joint Board refrain from recommending reverse auctions as a means for determining high cost universal service support for rural ROR ILECs. Existing embedded cost-based universal service mechanisms should instead be maintained so long as technical, marketplace and economic circumstances continue to warrant regulation of these carriers as incumbent carriers of last resort. Should the Joint Board wish to recommend application of a reverse auction method for CETCs, it should carefully avoid any phase-in approaches or other steps that would have the effect of fixing or freezing high cost support for ROR ILECs, as such approaches would have the unintended effect of ending existing cost-based ROR recovery mechanisms and jeopardize the ability of these carriers to continue providing basic service to rural customers, let alone advanced broadband services.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of NECA's Comments was served this 10th day of October 2006, by electronic filing and email to the persons listed below.

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